

**CITY OF ALAMEDA**  
Memorandum

To: Honorable Chair and  
Members of the Housing Authority Board of Commissioners

Honorable Chair and  
Members of the Community Improvement Commission

From: John A. Russo  
Chief Executive Officer/Executive Director

Date: July 5, 2011

Re: CIC and BOC Approve a First Amendment to the Owner Participation Agreement for 2428 Central Avenue Redirecting CIC Housing Bond Proceeds to Resources for Community Development for Acquisition of the Property at 2428 Central Avenue, and Amending the Form of the Promissory Note to Increase the Principal Amount from \$1 Million to \$9 Million, and Authorize the Executive Director/Chief Executive Officer to Execute all Required Documents

BOC Approve a form of a Partnership Agreement between the Housing Authority, RCD Housing LLC, and 112 Alves Lane, Inc. and Authorize the Chief Executive Officer to Execute the Initial Partnership Agreement and the Amended Agreement to Include Additional Limited Partners

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**BACKGROUND**

On March 2, 2011, the Housing Authority Board of Commissioners (BOC) and Community Improvement Commission of the City of Alameda (CIC) approved an Owner Participation Agreement (OPA) with Resources for Community Development (RCD), a non-profit affordable housing developer, for the acquisition and rehabilitation of the property at 2428 Central Avenue (Islander Motel) for permanent affordable housing. The OPA specified that the CIC would provide an \$8 million grant to the Housing Authority for acquisition of the property and a \$1 million loan to RCD for rehabilitation. The Purchase and Sale Agreement (PSA) between the Housing Authority and the property owner provides that the Housing Authority can assign the PSA to another entity of which the Housing Authority is a member organization.

**CC/CIC/HABOC**  
**Agenda Item #3-C**  
**07-05-11**

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To meet the requirements of outside funding sources, RCD has created The Alameda Islander LP to develop the affordable housing project. The Housing Authority plans to assign the PSA to the partnership and the partnership will acquire the property. Therefore, the OPA and the form of the Promissory Note must be amended to provide for a loan of the funds for property acquisition to The Alameda Islander LP. In addition, it is recommended that the Housing Authority, or an affiliate of the Housing Authority, become a special limited partner in the partnership prior to the property acquisition. A form of the proposed Partnership Agreement between RCD Housing LLC, the Housing Authority as special limited partner, and 112 Alves Lane Inc., as initial limited partner, is on file in the City Clerk's Office.

### DISCUSSION

Since the March 2, 2011 approval of the OPA and resolution to issue CIC Affordable Housing Fund bonds to finance the project, RCD and the Housing Authority have made substantial progress on the project. On March 7, 2011, RCD submitted its funding applications to the County of Alameda for County HOME and Housing Opportunities for People with AIDS (HOPWA) funds. On March 14, 2011, RCD received all of its required planning approvals from the Planning Board. On March 15, 2011, the City Council approved a \$1.3 million HOME loan, and on March 23, 2011, RCD submitted its funding application to the California Tax Credit Allocation Committee (TCAC) for 9% tax credit funding.

In early May, RCD was notified that it will receive over \$1 million in funding from the County through both the HOME and HOPWA programs. On May 19, 2011, the CIC successfully sold \$9.87 million in Affordable Housing Fund bonds, raising \$8.6 million for the Islander project. On June 15, 2011, TCAC published its staff report for the June 22, 2011 meeting recommending an award of tax credits for the Islander project that will provide over \$7.6 million in outside funds.

With the TCAC award, the sale of the bonds, and commitment of City HOME funds and County funds, all of the necessary funding is in place to move forward with the acquisition and renovation of the Islander Motel. A condition of TCAC funding requires that the project be under construction within six months of the award of tax credits. Therefore, the Islander Motel will be purchased and rehabilitation will commence by the end of the calendar year. The project will take 12 months to complete.

As the primary source of outside project funding, the award of tax credits sets the requirements of the deal structure. For example, the private equity raised requires the formation of a partnership to implement the project where the tax credit investors are limited partners and the non-profit developer is the general partner. The partnership agreement must be in place for a minimum of 15 years.

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In addition, grants of funds are treated very differently than loans of funds and whether or not funds are loaned or granted can impact the amount of the tax credit award. These technical details are often addressed once the award of tax credit funds is made.

To ensure that the tax credit award is maximized, the OPA needs to be amended so that the CIC's grant of \$8 million to the Housing Authority for property acquisition is instead an \$8 million loan to RCD. Therefore, pursuant to the OPA, as amended, the CIC would loan RCD \$9 million rather than granting the Housing Authority \$8 million and loaning RCD \$1 million for a portion of the renovation costs. Exhibit E of the OPA, the form of the Promissory Note, is also amended to reflect the \$9 million loan amount. The loan will accrue no interest and is deferred for the 57-year term.

For tax credit purposes, a partnership, The Alameda Islander LP, has been formed to construct the project and own the improvements. The OPA anticipates that the Housing Authority, or its affiliate, will become a special limited partner. This is important for several reasons. The Housing Authority, in consideration of the substantial investment by the CIC, has the right to assume ownership of the project at the end of the tax credit "recapture period", the 15-year time period in which the private investors use their tax credits. In addition to providing for this right in the OPA, it is important to include it in the tax credit partnership agreement. The Housing Authority would also like to gain experience in tax credit projects to become competitive in applying directly for tax credit financing. Acting as a special limited partner provides some of the required experience.

The Housing Authority is requesting approval of the form of the Partnership Agreement between RCD Housing LLC, the Housing Authority, and 112 Alves Lane, Inc. on file in the City Clerk's Office. It is anticipated that the Partnership Agreement will be modified when the tax credits are sold and the private investors are added as limited partners. Therefore, it is requested that the Chief Executive Officer be authorized to execute the initial Partnership Agreement and the amended Agreement to include additional limited partners.

Approval of the amendment to OPA and form of Partnership Agreement will bring the documents into compliance with the tax credit funding requirements and provide the Housing Authority with the ability to gain tax credit experience.

#### FINANCIAL IMPACT

There is no financial impact from amending the OPA to redirect CIC Affordable Housing Bond proceeds from a grant to the Housing Authority to a 0%, 57-year deferred loan to RCD nor from approving a form of Partnership Agreement

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between RCD Housing LLC, the Housing Authority and 112 Alves Lane, Inc. for the acquisition and rehabilitation of the Islander Motel.

ENVIRONMENTAL REVIEW

Environmental review for this project has been concluded and the Notice of Exemption was filed with the County Recorder's Office on March 22, 2011.

RECOMMENDATION

CIC and BOC approve a first amendment to the Owner Participation Agreement for 2428 Central Avenue redirecting CIC Housing Bond proceeds to Resources for Community Development for acquisition of the property at 2428 Central Avenue, and amending the Form of the Promissory Note to increase the principal amount from \$1 Million to \$9 Million, and authorize the Executive Director/Chief Executive Officer to execute all required documents.

BOC approve a form of a Partnership Agreement between the Housing Authority, RCD Housing LLC, and 112 Alves Lane, Inc. and authorize the Chief Executive Officer to execute the initial Partnership Agreement and the amended Agreement to include additional limited partners.

Respectfully submitted,



Michael T. Pucci  
Executive Director

By:



Debbie Potter  
Housing Development and Programs Manager

Exhibits:

1. Amendment to the OPA
2. Form of Partnership Agreement – on file in the City Clerk's Office

**FIRST AMENDMENT  
TO  
OWNER PARTICIPATION AGREEMENT  
(2428 Central Avenue)**

THIS FIRST AMENDMENT TO OWNER PARTICIPATION AGREEMENT (2428 Central Avenue) ("**First Amendment**") dated as of \_\_\_\_\_, 2011, is entered into by and among the COMMUNITY IMPROVEMENT COMMISSION OF THE CITY OF ALAMEDA, a public body corporate and politic ("**CIC**"), the HOUSING AUTHORITY OF THE CITY OF ALAMEDA, a public body, corporate and politic ("**Housing Authority**"), and RESOURCES FOR COMMUNITY DEVELOPMENT, a California nonprofit public benefit corporation ("**Developer**").

RECITALS

This First Amendment is entered upon the basis of the following facts, understandings and intentions of the parties hereto.

A. The CIC, Housing Authority, and Developer entered into that certain Owner Participation Agreement (2428 Central Avenue) dated as of March 2, 2011 (the "**Original Agreement**"), which shall be amended by this First Amendment. This First Amendment, together with the Original Agreement, hereinafter shall be referred to collectively as the "**Agreement**".

B. The CIC, Housing Authority and Developer desire to amend the Agreement in the manner set forth herein.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing Recitals, and the terms, conditions and covenants set forth below and other good and valuable consideration, the parties hereto agree as follows:

1. Definitions. The capitalized terms not otherwise defined herein shall have the meanings given in the Original Agreement.

2. Amendment of Sections 4.3(c) and 4.3(c)(i). Section 4.3(c) and 4.3(c)(i) are hereby deleted in their entirety and replaced with the following:

(c) In consideration of the Developer's and Housing Authority's obligations hereunder, including without limitation, Housing Authority's obligation to acquire the Property, Developer's obligation to complete the Project and to operate and maintain the Project, and subject to the terms and conditions

set forth herein, the CIC shall provide to Developer financial assistance consisting of the CIC Loan (as defined below) for acquisition of the Property and reasonable and necessary costs of developing the Project as described in the Development Budget (the “**Development Costs**”), which costs may include predevelopment costs, property acquisition, rehabilitation costs, tenant relocation costs, construction financing, or permanent financing. To facilitate the initial joint acquisition of the Property from Seller, Developer shall use a portion of the CIC Loan proceeds (Eighty Thousand Dollars (\$80,000)) as a prepayment to the Housing Authority for acquisition of its initial interest in the Property.

(i) Subject to the terms and conditions of this Agreement, including, without limitation, Developer’s fulfillment of the Conditions Precedent to CIC Loan Disbursement set forth in Section 4.3(c)(iv) below, the CIC shall loan to Developer Nine Million Dollars (\$9,000,000) (the “**CIC Loan**”) solely from the the Housing Set-Aside Revenues, including proceeds of the Bonds. The CIC Loan shall be evidenced by a promissory note (the “**Promissory Note – CIC Loan**”) substantially in the form attached hereto as Exhibit E. No interest shall accrue on the CIC Loan, which shall be a nonrecourse deferred loan.

3. Amendment of Section 4.3(c)(iii)(C). Section 4.3(c)(iii)(C) is hereby amended to delete “One Million Dollars” and replace it with “Nine Million Dollars (\$9,000,000)”.

4. Amended Exhibit E. Exhibit E to the Agreement is hereby deleted in its entirety and replace with Exhibit E attached hereto and incorporated herein by this reference.

5. Counterparts. This First Amendment may be executed in counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same instrument.

6. Ratification of Agreement. Except as otherwise expressly modified by the terms of this First Amendment, the Agreement remains unchanged and in full force and effect. In the event of any conflict or inconsistency between the terms of this First Amendment and the terms of the Original Agreement, the terms of this First Amendment shall control.

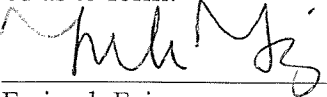
7. Authority. The undersigned hereby represent and warrant, each to the other, that (a) they have the legal right, power and authority to enter into this First Amendment on behalf of the party for whom they are a signatory, and (b) the execution, delivery and performance of this First Amendment has been duly authorized, and (c) no other action is requisite to the valid and binding execution, delivery, and performance of the Agreement.

IN WITNESS WHEREOF, the parties hereto evidence their agreement to the terms of this First Amendment as of the date first above written by signing below:

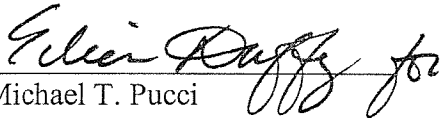
**CIC:**

Community Improvement Commission of the City of Alameda,  
a public body, corporate and politic

By: \_\_\_\_\_  
John A. Russo  
Executive Director

Approved as to form:  
By: \_\_\_\_\_  
Farimah Faiz  
Assistant General Counsel

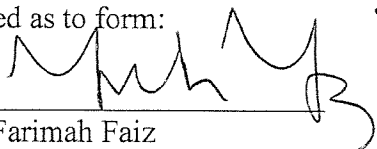
Recommended for Approval:

By: \_\_\_\_\_  
Michael T. Pucci  
Executive Director  
Housing Authority of the City of Alameda

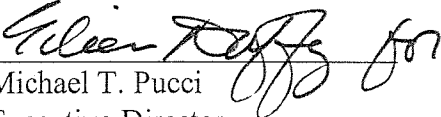
**HOUSING AUTHORITY:**

Housing Authority of the City of Alameda,  
a public body corporate and politic

By: \_\_\_\_\_  
John A. Russo  
Chief Executive Officer

Approved as to form:  
By: \_\_\_\_\_  
Farimah Faiz  
Assistant General Counsel

Recommended for Approval:

By: \_\_\_\_\_  
Michael T. Pucci  
Executive Director  
Housing Authority of the City of Alameda

*[Signatures continue on next page.]*

**DEVELOPER:**

Resources for Community Development,  
a California nonprofit public benefit corporation

By:

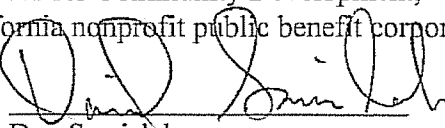
  
Dan Sawislak  
Executive Director



Exhibit E

Form of Promissory Note – CIC Loan

(Attached)

PROMISSORY NOTE – CIC LOAN  
(2428 Central Avenue)

\$9,000,000

Alameda, California

\_\_\_\_\_, 2011

FOR VALUE RECEIVED, the undersigned, THE ALAMEDA ISLANDER, L.P., a California limited partnership (“**Maker**”), promises to pay to the COMMUNITY IMPROVEMENT COMMISSION OF THE CITY OF ALAMEDA, a public body corporate and politic (the “**Holder**”), or order at 2263 Santa Clara Avenue, Room 230, Alameda, California 94501 or at such other place as Holder may direct from time to time in writing, the principal sum of NINE MILLION DOLLARS (\$9,000,000) (“**CIC Loan**”), or such lesser amount actually advanced to Maker, together with other charges as set forth herein below. All sums payable hereunder shall be payable in lawful money of the United States of America.

1. Owner Participation Agreement. This promissory Note (“**Promissory Note**”) is made and delivered pursuant to and in implementation of that certain Owner Participation Agreement (2428 Central Avenue) dated as of March 2, 2011, as amended, by and between the Holder, the Housing Authority of the City of Alameda, a public body, corporate and politic, and the Maker (the “**Agreement**”). The terms and conditions of such Agreement, which, among other things, allow for acceleration of this Promissory Note upon the occurrence of certain events of default, are hereby incorporated by reference. Capitalized terms not defined herein are as defined in the Agreement. In the event there is any conflict between the terms of this Promissory Note and the terms of the Agreement, the terms of the Agreement shall govern.
2. Terms of Payment.
  - a. The term of this Promissory Note is from the date of execution by Maker until \_\_\_\_\_, 2068.
  - b. The total amount due on the CIC Loan shall not bear interest. .
  - c. Payments shall be deferred from the date of execution of this Promissory Note until the end of the term of the CIC Loan.
  - d. This Promissory Note shall be due and payable upon the sale, conveyance, assignment, hypothecation, refinance without prior written consent of the CIC, or transfer to any other party(ies) (other than the Permitted Transferee (as defined in the Agreement)) of any interest of Maker in the Property described and defined in the Deed of Trust executed this date by Maker and described below. With the prior written consent of the CIC, this Promissory Note may be assumed for an assumption fee equal to time and expenses of CIC staff needed to process such a request.

3. Prepayment. Maker may prepay all or any part of the outstanding principal balance of this Promissory Note at any time, without penalty. Within thirty (30) days following such prepayment, in full, Holder shall return this Promissory Note to Maker marked "cancelled."
4. Deed of Trust. The CIC Loan shall be secured by a Deed of Trust dated concurrently herewith, encumbering the Property, recorded in the Alameda County Recorder's Office.
5. Default. Maker will be in default under this Promissory Note upon the occurrence of any one or more of the following events (each, an "**Event of Default**"):
  - a. Maker fails to make any payment of principal under this Promissory Note within ten (10) days after the date when due; or
  - b. Maker fails to comply with any provision contained in this Promissory Note or the Agreement, and does not cure that failure within thirty (30) days after written notice from Holder, or if such failure is not of a nature which can be cured within such thirty (30) day period, Maker does not within such thirty (30) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure ; or
  - c. An event of default under the Agreement occurs subject to Section 7.8 of the Agreement.

Subject to Sections 7.7 and 7.8 of the Agreement, if an Event of Default occurs, the Holder may exercise any right or remedy which it has under this Promissory Note or the Agreement, or which is otherwise available at law or in equity or by statute, and all of Holder's rights and remedies shall be cumulative. Upon the occurrence of any Event of Default, Holder's obligation to lend under the Agreement shall automatically terminate. Upon the occurrence of any Event of Default all of Maker's obligations under this Promissory Note and the Agreement may become immediately due and payable without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or other notices or demands of any kind or character, all at Holder's option, exercisable in its sole discretion. Holder's failure to exercise such option shall not constitute a waiver of such option with respect to any subsequent event. Holder's failure in the exercise of any other right or remedy hereunder or under any agreement or other instrument which secures the indebtedness or is related thereto shall not affect any right or remedy and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof.

6. Waivers. Maker expressly waives: (a) any defense based upon any legal disability or other defense of Maker, or other person, or by reason of the cessation or limitation of the liability of Maker from any cause other than full payment and performance of those obligations of Maker which are provided for hereunder; (b) any defense based upon any lack of authority of the members, officers, directors, partners or agents acting or purporting to act on behalf of Maker or any member of Maker or any defect in the formation of Maker

or any member of Maker; (c) any defense based upon the application by Maker of the proceeds of this Promissory Note for purposes other than the purposes represented by Maker to Holder or intended or understood by Holder or Maker; (d) any defense based upon Holder's election of any remedy against Maker; (e) any defense based upon Holder's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code or any successor statute; (f) any defense based upon any borrowing or any grant of a security interest under Section 364 of the Federal Bankruptcy Code; (g) any right of subrogation, any right to enforce any remedy which Holder may have against Maker and any right to participate in, or benefit from, any security for this Promissory Note or the other documents now or hereafter held by Holder; and (h) presentment, demand, protest and all notices other than any notice expressly provided for in this Promissory Note and/or the Agreement.

7. Costs. Upon the occurrence of an Event of Default, Maker promises to pay all costs, expenses and reasonable attorneys' fees incurred by the Holder in connection with the collection or enforcement of this Promissory Note or any part of it, whether or not suit is filed, including but not limited to, all costs, expenses and attorneys' fees incurred by the Holder in connection with any insolvency, bankruptcy, reorganization, arrangement or similar proceedings involving Maker.
8. Limited Recourse. Notwithstanding anything to the contrary in this Promissory Note, there shall be no personal liability of Maker, and the liability of Maker shall be limited to the property securing the Promissory Note, hereinafter referred to as the "Property". Holder shall, however, be entitled to institute an action, suit, claim or demand against, and to recover a judgment against Maker, but only for any deficiency and the cost of collections, and only to the extent that such deficiency results directly from: (a) intentional or willful fraud or misrepresentation by Maker in connection with the representations and warranties provided by Maker; (b) the retention of any rents from the Property to Maker after an event of default has occurred and the cure period of such an event has expired (to the full extent of such rents retained and collected by Maker after the occurrence of an event of default after the cure period); (c) the willful removal or disposal by Maker of personal property or fixtures of the Property constituting a significant value, except for that which occurs through reasonable maintenance and repair; (d) the retention or misapplication by Maker of any insurance proceeds or any condemnation award with respect to the Property to the extent of such insurance proceeds and/or condemnation award; or (e) the intentional or negligent waste of any portion of the Property by Maker.
9. Amendments and Modifications. This Promissory Note may not be changed orally, and may be amended only by an agreement in writing, signed by the party against whom enforcement of any waiver, change, modification or dispute is sought.
10. Governing Law. This Promissory Note shall be construed and enforced in accordance with the laws of the State of California.
11. Successors. The terms "Maker" and "Holder" shall be construed to include the parties' respective successors and assigns.

12. Severability. If any provision of this Note shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

IN WITNESS WHEREOF, the undersigned has executed this Promissory Note as of the date first set above. Maker has delivered this Promissory Note as of the day and year first set forth above.

MAKER:

The Alameda Islander, L.P.,  
a California limited partnership

By: RCD Housing LLC,  
a California limited liability company,  
its general partner

By: 112 Alves Lane, Inc.,  
a California nonprofit public benefit corporation,  
its sole member/manager

By: \_\_\_\_\_  
Dan Sawislak  
Executive Director